IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1131 of 2004
In
SPECIAL CIVIL APPLICATION No. 6318 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYABEN MANILAL BHATT - Appellant(s)
Versus
JAMNAGAR DISTRICT PANCHAYAT & 1 - Respondent(s)

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Appearance :
MR HASIT H JOSHI for Appellant
MR PV HATHI for Respondents 1 & 2

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 02/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. By this Appeal under Clause 15 of the Letters Patent, the appellant has challenged the legality of the judgement and order dated 5th July, 2000 passed by the learned Single Judge in Special Civil Application No.6318 of 2000, whereby the petition filed by the appellant seeking directions against the respondents to give pensionary benefits to the appellant, is dismissed in limine.

2. The facts giving rise to the present appeal are that the appellant (original petitioner) had joined the services of the respondent No.2 as a Primary Teacher with effect from 16th June, 1959 and served as such till 22nd August, 1972. On 22nd August, 1972, the appellant proceeded on maternity leave and thereafter, did not resume service. It is the case of the appellant that she had reported for duty on 6th May, 1973, however, she was not permitted to join the service. The appellant attained the age of superannuation on 1st January, 1990. It appears that thereafter, she had made several representations claiming pension and other retiral benefits and has ultimately filed the above writ petition before this Court, after a delay of more than ten years, sometime in June, 2000.

3. The learned Single Judge, after considering the record of the Special Civil Application as well as the submissions advanced by the learned Advocate for the appellant, has found that it is an admitted fact that the appellant had joined service in the year 1959 as an untrained Primary School Teacher and had served as such till 22nd August, 1972. Since then, the appellant had proceeded on maternity leave, and after expiry of the leave period, as per the say of the appellant, she had reported for duty on 6th May, 1973. The learned Single Judge found that the veracity of the copy of the joining report produced at Annexure-A to the petition is questionable. It was noted that it is an admitted fact that the appellant had not rendered service since 22nd August, 1972 till she reached the age of superannuation on 1st January, 1990, after which she started making representations for pension and other retiral benefits.

[3.1] The learned Single Judge has observed that, though it is contended that even after 6th May, 1973, the appellant had made several oral representations to the Principal of the concerned school, there is no documentary evidence in support of this contention, and therefore, the said submission cannot be believed. The learned Single Judge has noted that, even in her representation dated 1st

January, 1990, the appellant had stated that after expiry of period of maternity leave, she could not join duty on account of her young son.

[3.2] The learned Single Judge has also observed that, it appears that after expiry of maternity leave, the appellant had no intention to serve, and she had never made any effort to join the duty, neither had she made any representation to any of the superior officers, nor had she approached any court of law. It was only on reaching the age of superannuation, that she started making representations for pension and other retiral benefits. The learned Single Judge has negatived the contention that, as inspite of her absence from service, the appellant's service had been continued and she had neither been discharged from service, nor had her service been terminated in any other manner, the appellant has continued in service till the age of superannuation and is, therefore, entitled to the retiral benefit.

[3.3] On the basis of the admitted facts, the learned Single Judge has come to the conclusion that, even if the appellant's service had not been terminated by formal order, undoubtedly, she had remained absent from service since the year 1972/1973. The learned Single Judge has held that the appellant's earlier service rendered from the year 1959 to 1972/1973

stands cancelled for pension, in view of provisions of Rule 250 of the Bombay Civil Services Rules, 1959 (the Rules), which provide that absence from duty otherwise than on authorized leave shall constitute an interruption of service, and that the interruption of service shall entail cancellation of all duty counting for pension. Accordingly, it has been held that the appellant cannot claim the pension or other retiral benefits on her reaching the age of superannuation.

[3.4] The learned Single Judge has further observed that, even otherwise, on account of her long absence from service, the appellant should be deemed to have abandoned the service, and accordingly, the relationship of master and servant having been severed, the appellant shall have no claim over the Panchayat.

4. Heard Mr.Hasit Joshi, learned advocate for the appellant and Mr.P.V.Hathi, learned advocate for the respondents No.1 and 2.

5. Learned advocate Mr.Joshi for the appellant has assailed the impugned judgement and order. It was submitted that the learned Single Judge ought to have appreciated that the appellant had served for about 13 years and therefore, she is entitled for pensionary and other retiral benefits for the services rendered by her since her services were, otherwise, not terminated,

nor had she been discharged in accordance with law. That, in view of the fact that her services had not been terminated in accordance with law, the appellant is deemed to have continued in service till she reached the age of superannuation and therefore, she was entitled to pension under the provisions of Rule 251 of the Rules.

[5.1] It was next submitted that the reliance placed upon Rule 250 of the Rules was also misconceived and unwarranted. It was submitted that the learned Single Judge ought to have appreciated Note-2 given below Rule 250 of the Rules and ought to have directed the respondents for condonation of interruption, and to consider the case of the appellant for pensionary and other retiral benefits for the services rendered by her by condoning the interruption in her service. It was contended that the maximum requirement for being eligible for pension as provided under the B.C.S.R. was ten years of service. Accordingly, it was urged that, from the date of her appointment till the date of retirement, the appellant had in all completed 13 years, 9 months and 20 days of continuous service and she was, therefore, entitled to pension. It was submitted that the appellant's services were never terminated and therefore, she reached the age of superannuation without any interruption and hence, she was entitled for pensionary benefits for the period for her actual service i.e. for the period of 13 years,

9 months and 20 days. It was submitted that, in the circumstances, the learned Single Judge was not justified in rejecting the appellant's petition for pension and other retiral benefits and as such, the impugned judgement and order of the learned Single Judge is required to be quashed and set aside.

6. Learned advocate Mr.Hathi for the respondents has supported the impugned judgement and order. It was submitted that, after having gone on maternity leave in 1972, the appellant did not resume duty and reached the age of superannuation on 1-1-1990. It was submitted that, as per her own say, the appellant had not joined duty after 1973 till the so-called age of superannuation in January, 1990 and, therefore, she is not entitled to claim any pension, particularly on the basis of her service from 1959 to 1972/1973. It was submitted that the learned Single Judge was fully justified in holding that the appellant had no intention to serve after her maternity leave, and that she had abandoned the service, and that the relationship of master and servant had ceased from 1972/1973. It was pointed out that, pursuant to the statutory notice dated 11th December, 1995 served by the appellant through her lawyer on the District Panchayat, a positive reply was sent by the District Primary Education Officer on 6th January, 1996, specifically stating that as the appellant had not rendered 20 years of service as required, she was not

entitled to pension. It was submitted that there was no error in the impugned judgement and order, and the Appeal is misconceived and therefore, the same is required to be dismissed.

7. Upon perusal of the impugned judgement and order as well as the record of the Special Civil Application and the affidavit in-reply filed by the respondents in this Letters Patent Appeal, it appears to be an admitted position that the appellant had joined the service of the respondent No.2 as an Untrained Teacher and was working as such till 22nd August, 1972. On 22nd August, 1972, the appellant had proceeded on maternity leave and did not resume service thereafter. It is the case of the appellant that she had reported for duty on 6th May, 1973, however, she was not permitted to join the service. However, it may be pertinent to note that, in the statutory notice dated 11th December, 1995 issued by the appellant through her advocate against the respondents, it is the case of the appellant that she was not allowed to join duty and was told that she would be allowed to join only after exemption is given by the District Office. Therefore, it appears that the appellant being an untrained teacher was required to go for training, however, the appellant had neither gone for training, nor obtained exemption in that regard. Though it is the case of the appellant that she was not permitted to resume duties from May 1973, she has not taken any positive steps and has

remained indolent till she attained the age of superannuation on 1st January, 1990. It is only thereafter that the appellant has woken up from her slumber and has started making representations to the respondents claiming pensionary and other retiral benefits. Even thereafter, the appellant has remained indolent for a period of 10 years and has filed the present petition in the year 2000.

[7.1] Insofar as the contention raised by the learned advocate for the appellant that the services of the appellant are deemed to be continued as she had neither been discharged from services, nor had her services been terminated till she reached the age of superannuation is concerned, the same has rightly been negatived by the learned Single Judge. The learned Single Judge has rightly held that, on account of her long absence from service, the appellant should be deemed to have abandoned the service, and that, the relationship of master and service having been severed, the appellant can have no claim against the respondents.

[7.2] The contention that as per the provisions of the Rules, the appellant is entitled to pensionary benefits, at least for the period of her actual service, i.e. for the period of 13 years, 9 months and 20 days does not merit acceptance in view of the fact that the minimum service required for being entitled

to pension is 20 years and not 10 years as is sought to be contended on behalf of the appellant. Besides, the learned Single Judge has rightly held that in view of the provisions of Rule 250 of the Rules, the earlier service rendered by the appellant stands cancelled for pension.

[7.3] Rule 250 of the Rules, as is relevant for the purpose of the present case, reads as under :

> *"**250** : [a] The following constitute an interruption of service -*
>
> *(1)xxxxx*
> *(2)xxxxx*
> *(3)Absence from duty otherwise than on authorized leave unless the absence follows immediately upon authorized leave and no other Government servant is appointed substantively to the post on which the absentee holds a lien, or on suspension immediately followed by reinstatement.*
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> *[b] Unless Government in any case otherwise, direct an interruption of service shall entail cancellation of all duty counting for pension."*

A bare reading of the aforesaid rule makes it amply clear that the appellant who was absent

from duty otherwise than on authorized leave from 5-5-1973, and had not joined the service till the date of her superannuation, is directly governed by the provisions of Rule 250, and accordingly, the interruption of service would entail cancellation of all duty counting for pension. Accordingly, apart from the fact that the appellant has not completed the minimum service required for availing pensionary benefits i.e. 20 years, even otherwise, under the provisions of Rule 250, as the appellant has not resumed duty after proceeding on maternity leave, all duty counting for pension would stand cancelled.

Reliance placed upon Rule 251 of the Rules is also misplaced in view of the fact that the said Rule merely enumerates the different classes of pension which may be granted to Government servants or their families.

[7.4] The contention that in view of the provisions of Note-2 given below Rule 250 of the B.C.S.R., the respondents were required to be directed to condone the interruption in service and grant pensionary and other retiral benefits to the appellant, is thoroughly misconceived, as the appellant has never sought for condonation of interruption in service. Moreover, condonation of interruption is not permissible unless there are sound reasons for doing so, and in the facts of the present case, the appellant cannot be said to have any sound reasons for not

resuming the service for an inordinately long period from 1973 till 1990.

[7.4] Another contention raised on behalf of the appellant was that pension is a right and not a bounty. In support of the said contention, reliance was placed upon the decisions of this Court in the case of ***Mankunvarba Manharsinh Vaghela v. Tharad Nagar Panchayat and Anr.*** (1992(1) GLR 375), ***Kashiben N. Wala v. Barwala Nagar Panchayat & Ors.*** (1994 (1) GLR 398) and ***Ramanbhai Popatbhai Bhangi and Anr. v. State of Gujarat and Ors.*** (1999 (2) GLH 941). There can be no quarrel with the proposition laid down in the decisions cited by the learned Advocate for the appellant. However, in absence of entitlement to pension, the said decisions do not lend any support to the appellant.

8. For the foregoing reasons, we are in complete agreement with the view taken by the learned Single Judge and do not see any ground to interfere with the impugned judgement and order. The appeal being devoid of any merit, deserves to be dismissed, and is, accordingly, dismissed. There shall be no order as to costs.

[A.M.KAPADIA, J.]

[HARSHA DEVANI, J.]

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